IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 801 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AJITBHAI PURSHOTTAMDAS PATEL

Versus

GUJARAT STATE POULTRY FARMERS CO-OPERATIVE FEDERATION LTD.

Appearance:

1. Special Civil Application No. 801 of 1991

MR MN MEHTA for Petitioner No. 1

MR BS PATEL for Respondent No. 1

MR AMIT KOTAK for Respondent No. 2

MR KV GADHIA for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 19/07/2002

ORAL JUDGEMENT

1. By means of this petition, the petitioner has sought for directions to the respondent Federation and for quashing and setting aside the impugned order dated 5-5-1990 passed by the Managing Director of the respondent Corporation and for reinstatement on the post of Account Officer with full back wages.

2. The petitioner was appointed by the Managing Director of the No. 1 Gujarat State Poultry Farmers Cooperative Federation Ltd. (fort short "respondent Federation") vide order dated 13-1-1982. Initial appointment of the petitioner was made on probation for a period of one year and he continued till the date of passing of the impugned order dated 5-5-1990.

3. The first contetion of the learned counsel for the petitioner is that the appointing authority of the petitioner is the Chairman of the respondent Federation. While, the petitioner's services have been terminated by the Managing Director of the respondent Federation who has no power or authority to pass the impugned termination order of the petitioner. As such, the termination order of the petitioner is illegal and is not sustainable in the eye of law. I have considered this contention of the learned counsel for the petitioner but he could not be able to satisfy the Court on this point that the Managing Director of the respondent Federation is not a competent authority to pass the impugned order of termination of the petitioner. He has not produced any Rules or Regulation of the respondent Federation regarding competency of the Managing Director of the respondent Federation nor he has produced any document in this respect. Hence, I am unable to accede the contention made by the learned counsel for the petitioner.

4. Second contention of the learned counsel for the petitioner is that the petitioner was initially appointed as accounts officer on 13-1-1982 on probation for a period of one year and he continued till the date of termination. As such, after one year it will be presumed that he was confirmed and without following any procedure of law and without holding any departmental inquiry for removing the petitioner from the service and therefore the impugned termination order is vitiated. I have also considered this argument of the learned counsel for the petitioner.

5. It is well settled law that after completion of probation period, the employee is not automatically confirmed and order of confirmation is required to be passed by the competent authority. In the present case, the petitioner has not shown any order or has not produced any material before this Court to show that the petitioner's services were confirmed by any of the competent authority of the respondent Federation. As such, the probation period of the petitioner will be deemed to have been extended and no presumption can be

raised that after completion of the probation period the petitioner will be deemed to have been confirmed by the respondent Federation.

6. It is also pointed out that the petitioner himself reported the matter to the authority concerned regarding irregularities committed in the transaction of the respondent Federation by the other employees. After receipt of that report, the petitioner's termination order has been passed. From the impugned order it is clear that during the tenure of the service of the petitioner in the respondent Corporation, there is administrative irregularity and monetary misappropriation for which the respondent Federation reserves its rights to take legal action for the liability as per the Rules, which clearly shows that due to some misappropriation of the money of the respondent Federation, the petitioner's services have been terminated. As such, the order of termination of the petitioner is illegal and is not sustainable in the eye of law. I have also taken into consideration this argument of the learned counsel for the petitioner. But I do not find any substance in the same.

7. It is also mentioned that the services of the petitioner are no longer required and hence the services of the petitioner were terminated vide order dated 5-5-1990 and by the impugned order of termination no stigma or stricture was passed against the petitioner. Only from the last portion of the impugned order, it appears that the respondent Federation reserves its right to take legal action in accordance with law and as per the Rules, if any prima facie case is made out. As such, I do not find any substance in this argument of the learned counsel for the petitioner also.

8. It was further pointed out that the respondent Corporation has been liquidated and accordingly the respondent no. 3 has been appointed as a Liquidator. Learned counsel for the petitioner submitted that the reinstatement of the petitioner cannot be directed. However, the petitioner is entitled to the compensation in manner and way awarded to other employees of the respondent Federation. In this respect, the respondent no. 1 has already been liquidated and the services of the petitioner has also been terminated and therefore the impugned order of termination of the petitioner cannot be said to be illegal. Hence, the petitioner is not entitled to get any compensation which is awarded to other employeeso of the respondent Federation. The learned counsel for the respondent No. 2 has submitted

that the present petition is not maintainable as the alternative remedy under the provisions of the Cooperative Societies Act, 1961.

9. Considering the facts and circumstances of the case, submissions made by the learned counsel for the parties and the material on record, no departmental inquiry is required to be conducted as no charge has been framed or levelled against the petitioner and hence question of affording reasonable opportunity of hearing does not arise at all. Therefore, the impugned order cannot be said to be illegal and unsustainable in the eye of law on any of the counts. Hence, this petition has no merit and the same deserves to be dismissed. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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/JVSatwara/